

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 26, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA LUCAS KAY L. SCHMIDT

Defendant.

No. 2:23-cr-00099-MKD

ORDER GRANTING
DEFENDANT'S MOTION TO
WITHDRAW PLEA AND STRIKING
RELATED PRELIMINARY ORDER
OF FORFEITURE

ECF No. 67

On September 25, 2024, the Court held a hearing on Defendant's Motion to Continue Sentencing and Extend Deadlines, Withdraw the Previously Entered Plea Agreement, and Set a New Change of Plea, ECF No. 67. *See* ECF No. 71. Defendant appeared in custody and was represented by AFD Nicolas Vieth. AUSA Alison Gregoire represented the United States.

On April 3, 2024, Defendant pleaded guilty to the offense of felon in possession of ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8), as charged in Count 1 of the Superseding Indictment. ECF No. 62. The Court entered a related Preliminary Order of Forfeiture on April 8, 2024. ECF No. 63.

1 In the months since Defendant's guilty plea, a Ninth Circuit panel found
2 Section 922(g)(1) unconstitutional as applied, then the Ninth Circuit vacated the
3 panel opinion pending rehearing en banc. *See United States v. Duarte*, 101 F.4th
4 657 (9th Cir. 2024), *vacated*, 108 F.4th 786 (9th Cir. 2024). The en banc
5 proceedings continue, with oral argument projected for December 2024. *See Order*
6 *at 1*, No. 22-50048 (9th Cir. Aug. 7, 2024), ECF No. 89.

7 Defendant seeks to withdraw his guilty plea to the Section 922(g)(1) offense
8 so that he may instead enter a guilty plea to a different offense, pursuant to a Plea
9 Agreement. ECF No. 67 at 4; *see also* ECF No. 72. Defendant and the United
10 States agree to this disposition to avoid delaying sentencing while awaiting an en
11 banc decision in *Duarte*. ECF No. 67 at 4; ECF No. 69 at 3. Defendant explains
12 that he wishes to avoid delaying his sentencing because his medical conditions
13 require specialized medical care that is available through the Bureau of Prisons but
14 not through the local jails. ECF No. 67 at 4.

15 Pursuant to Fed. R. Crim. P. 11(d)(2), a defendant may withdraw a guilty
16 plea "after the court accepts the plea, but before it imposes sentence" upon the
17 defendant's showing of "a fair and just reason for requesting the withdrawal." The
18 Court finds that Defendant has shown a fair and just reason to withdraw his
19 April 3, 2024, guilty plea.
20

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Continue Sentencing and Extend Deadlines, Withdraw the Previously Entered Plea Agreement, and Set a New Change of Plea, **ECF No. 67**, is **GRANTED**.

a. Defendant is permitted to withdraw from the April 3, 2024, Plea Agreement, ECF No. 60.

2. The April 8, 2024, Preliminary Order of Forfeiture, **ECF No. 63**, is **STRICKEN**.

3. The sentencing hearing and all related deadlines **REMAIN SET** on the dates specified by the previous Order, ECF No. 68.

4. Pursuant to 18 U.S.C. § 3161(i), a defendant who enters a guilty plea that is subsequently withdrawn shall be deemed indicted for Speedy Trial purposes on the day the plea is withdrawn. *United States v. Solorzano-Rivera*, 368 F.3d 1073, 1077 (9th Cir. 2004).

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to counsel and the United States Probation Office.

DATED September 26, 2024.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE